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No. 699

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

AGAINST

SING KEE,

Defendant-Appellant.

APPELLANT'S APPENDIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0689.

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Docket Entries

Crim. No. C 15038

THE UNITED STATES

vs.

SISO KEE

VIOLATION

Title 18, Sec. 371, 2/1542 and 3238 USC.

Conspiracy to induce aliens to enter the U. S. illegally and make false statements in applications for passports; and making false statements in application for passports.

Five counts.

Date	*Proceedings*
5- 3-56	Filed indictment.
5- 3-56	Warrant of arrest ordered. Warrant issued. Noonan, J.
5- 4-56	Defendant appears in court with his attorney. Warrant vacated. Pleads not guilty. Bail fixed at $5000. Paroled until 4 PM to give bail. Deft. ordered fingerprinted. Deft. allowed 30 days to file motions. Noonan, J.
5- 4-56	Filed notice of appearance by Curran, Mahoney, Cohn & Stim, 29 Bway, NYC as atty for deft.
5- 4-56	Filed affdt and order extending bail limits of deft. Levet, J.

Docket Entries

Date	*Proceedings*
5- 8-56	Filed warrant for arrest (Warrant Vacated) Noonan J
5-21-56	Filed affdt. and notice of motion for bill of particulars.
5-21-56	Filed notice of motion for an order dismissing count 2 and 3 of indictment.
6-25-56	Filed affdt. in opposition to motions.
6-22-56	Memo endorsed on motion papers to dismiss counts 2 & 3. Motion is denied. So ordered. McGohey, J.
6-22-56	Memo endorsed on motion papers for bill of particulars. Motion for bill of particulars on items 1 to 15 inc. granted. The motion for discovery and inspection of the dossiers of the applications for passports is denied. McGohey, J.
6-29-56	Filed order that defendants motion for bill of particulars be granted etc., and that defendants motion for the discovery and inspection of the applications for passports is denied. McGohey, J.
7- 3-56	Filed affdt. and notice of motion for an order permitting defendant to inspect and copy certain records, pursuant to Rule 17(c).
7-11-56	Motion withdrawn in open court by Attorney Menahem Stim. Murphy, J.
7-12-56	Filed bill of particulars.
10-10-56	Filed Transcript of record of proceedings, dated 5-4-56.

Docket Entries

Date	*Proceedings*
11-19-56	Filed Bond in the sum of $5,000. Public Service Mutual Insurance Co. (Surety).
2- 4-57	Trial begun before Judge Levet and jury.
2- 5-57	Trial cont'd.
2- 6-57	Trial cont'd.
2- 7-57	Trial cont'd.
2- 8-57	Trial cont'd.
2-11-57	Trial cont'd.
2-13-57	Trial cont'd.—Government rests. Counsel for deft. moves to strike testimony and to dismiss the indictment. Decision reserved as to counts 1 and 5. Denied as to counts 2-3 and 4. Motions to strike testimony—denied. Levet, J.
2-14-57	Trial cont'd.—The court denies motions to dismiss count 1. Count 5. is dismissed on defense counsel's motion. Levet, J.
2-15-57	Trial cont'd. Defendant rests. Government rests. Counsel for deft. renews motions to dismiss.—Motions denied. Levet, J.
2-18-57	Trial cont'd. and concluded. Jury retires to deliberate. Jury returns verdict of "Guilty" on counts 1-2-3 and 4. Bail of $5,000 continued. Sentence set for 3-5-57 at 10 A. M. Pre-Sentence report ordered. Levet, J.
3- 5-57	Filed Judgment—#61,478 Sentence—Two and one-half years on each of counts 1-2-3 and 4. to run concurrently with each other at a place

Docket Entries

Date	*Proceedings*
	of confinement to be designated by the Atty. Genl. of the U. S. Fined $1,500 on each of counts 1 2 3 and 4. Total fines amounting to $6,000 are to be paid, or he stands to be committed until otherwise discharged according to law. Bail set at $10,000 pending appeal. Levet, J.
3-5-57	Issued commitment and copies.
3-6-57	Filed bond pending appeal dated 3-6-57 in the sum of $10,000. Continental Casualty Company. (Surety)
3-6-57	Filed notice of appeal.
3-11-57	Filed order dated 3-8-57 extending the bail limits of Sing Kee. Consented to by U. S. Atty. and Surety. Murphy, J.
4-12-57	Filed stipulation extending the time to docket the record on appeal to 4-17-57. So ordered. 4-12-57. Levet, J.
4-16-57	Filed Transcript of record of proceedings, dated Feb. 4, 5, 6, 7, 8, 11, 13, 14, 15, 18, 1957 and March 5, 1957.
4-17-57	Filed stipulation designating filed papers to be included in record on appeal.
4-17-57	Filed notice that the record on appeal has been certified to the US CA on 4-17-57.
4-26-57	Filed recognizance dated 4-26-57 in the sum of $6,000. guaranteeing the payment of fine imposed. Continental Casualty Company. (Surety)

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

—o—

UNITED STATES OF AMERICA

v

SING KEE

—o—

The Grand Jury charges:

1. Beginning in and about 1949 and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, Sing Kee, the defendant herein, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree with Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Wing Gim (also known as Jew Ing Gim), Ng Yee Chor (also known as Ng Quock Keung), Ng Jock Neuy (also known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (also known as Sum Yuen Quay), and George Wong, named as co-conspirators but not defendants herein, and with divers other persons to the Grand Jurors unknown, to defraud the United States and to commit offenses against the United States, to wit, to violate Title 18, Sections 1425 and 1542 and Title 8, Section 1324 of the United States Code.

2. It was part of said conspiracy that the defendant and other co-conspirators would wilfully and knowingly encourage and induce the entry into the United States of

aliens not lawfully entitled to enter or reside under the laws relating to the immigration of aliens.

3. It was further part of said conspiracy that the defendant and other co-conspirators would make false statements and cause false statements to be made in applications for passports in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai, with intent to induce and secure the issuance of passports under the authority of the United States for the use of others, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22 Code of Federal Regulations).

4. It was further part of said conspiracy that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of said applications in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai.

5. It was further part of said conspiracy that the defendant and other co-conspirators would submit and file, and cause to be submitted and filed, the aforesaid applications with the Consul of the United States of America in and for the Consular District of Hong Kong in the British Crown Colony of Hong Kong.

6. It was further part of said conspiracy that the defendant and the other co-conspirators would knowingly attempt to procure and obtain documentary evidence of citizenship for other persons not entitled thereto, by causing civil actions to be instituted and filed under Section 503

of the Nationality Act of 1940, in the names of Jew Sun Ai, Moy Hing Mee, Chin Nin Gon and Chin Sen Toon, to have them declared citizens of the United States.

OVERT ACTS

The Grand Jury further charges that in furtherance of the said conspiracy and to effect the objects thereof the defendant and other co-conspirators performed the following overt acts:

1. In or about 1949, in the Southern District of New York, the defendant Sing Kee had a conversation with Hom Wing Gim at 11 Mott Street, New York, N. Y.

2. In or about December, 1949, in the Southern District of New York, the defendant Sing Kee was paid $400. by Eng Gim Ting at 11 Mott Street, New York, N. Y.

3. On or about December 21, 1949, in the Southern District of New York, the defendant Sing Kee handed Hom Wing Gim an unsigned affidavit at 11 Mott Street, New York, N. Y.

4. In or about March, 1950, in the Southern District of New York, the defendant Sing Kee had a conversation with Ng Mong On at 11 Mott Street, New York, N. Y.

5. On or about the 24th day of March, 1950, in the Southern District of New York, the defendant Sing Kee handed Ng Mong On an unsigned affidavit at 11 Mott Street, New York, N. Y.

6. In or about April, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Chin Kung Chee at 11 Mott Street, New York, N. Y.

7. On or about the 5th day of May, 1952, in the Southern District of New York, the defendant Sing Kee handed Chin Kung Chee an unsigned affidavit at 11 Mott Street, New York, N. Y.

8. In or about September, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Moy Mun Sing at 11 Mott Street, New York, N. Y.

9. On or about the 6th day of October, 1952, in the Southern District of New York, the defendant Sing Kee handed Moy Mun Sing an unsigned affidavit at 11 Mott Street, New York, N. Y.

10. In or about December, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with George Wong at 11 Mott Street, New York, N. Y. (Title 18, Section 371, United States Code.)

COUNT TWO

The Grand Jury further charges:

On or about January 18, 1951, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Ng Quock Keung, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101

et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Ng Mong On, when in truth and in fact as the defendant then well knew, the passport applicant was not the son of Ng Mong On. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT THREE

The Grand Jury further charges:

On or about June 18, 1951, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Jew Sun Ai, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Jew Ing Gim, when in truth and in fact, as the defendant then well knew, the passport applicant was not the son of Jew Ing Gim. (Title 18, Sections 2, 1542 and 3238, United States Code.)

Indictment

COUNT FOUR

The Grand Jury further charges:

On or about October 28, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Moy Hing Mee, with intent to induce and secure the issuance of a passport under the authority of the United States for the use of another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant was the son of Moy Man Sing, when in truth and in fact, as the defendant well knew, the passport applicant was not the son of Moy Man Sing. (Title 18, Sections 2, 1542 and 3238, United States Code.)

COUNT FIVE.

The Grand Jury further charges:

On or about December 10, 1952, at the British Crown Colony of Hong Kong, Sing Kee, the defendant herein, who is found in the Southern District of New York, did wilfully and knowingly make a false statement in an application for passport in the name of Sum Nin Oon, with intent to induce and secure the issuance of the passport under the authority of the United States for the use of

another, contrary to the laws regulating the issuance of passports (Section 211a et seq., Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations), by submitting an affidavit to the Consul of the United States of America in and for the consular district of Hong Kong in support of said application stating that the passport applicant and his father were members of the Sum family, when in truth and in fact, as the defendant then well knew, the passport applicant and his father were not members of the Sum family. (Title 18, Sections 2, 1542 and 3238, United States Code.)

.....
Foreman

PAUL W. WILLIAMS
United States Attorney

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

C 150-98

U. S. A.

v.

SING KEE

On this 5th day of March, 1957 came the attorney for the government and the defendant appeared in person and by counsel,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to violate the Immigration Laws of the U. S.;

Wilfully and knowingly making false statements in applications for passports. (Title 18, Secs. 371, 2, 1542 and 3238 U. S. Code) as charged in counts 1, 2, 3, and 4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown on appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

Judgment and Commitment

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two and One Half ($2\frac{1}{2}$) years and fined $1500. on each of counts 1, 2, 3, and 4. Prison sentences to run concurrently with each other. Defendant to stand committed until fines imposed on counts 1, 2, 3, and 4 totalling $6000. are paid or he is otherwise discharged according to law.

Bail set at $10,000 pending appeal.

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

RICHARD H. LEVET
United States District Judge

Excerpts From Testimony

(590)

New York, February 14, 1957.
10.30 o'clock a. m.

* * * * *

SAMUEL B. WATERMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Cross-Examination by Mr. Goettel:

* * * * *

(690) Q. I believe you testified on direct examination that you don't remember how you were paid in the Chin Way Mon case, is that correct? A. I don't recall right now how I was paid, no.

Q. Were you asked this question?

The Court: Excuse me, just a moment. Didn't you testify that you were paid directly by Chin Way Mon in that case?

The Witness: Yes, I did, but I am assuming he means whether by cash or check.

The Court: Well, make your question clear. You don't recall whether it was by cash or by check?

(691) The Witness: No, I don't.

The Court: As you said before.

Q. Were you asked this question and did you give this answer before the Grand Jury concerning the Chin Way Mon payment:

"Do you know how he paid you, whether by cash or check? A. He paid me by check."

A. What is the question?

Q. Did you give that answer? A. If that is the answer given there in the minutes, that is the answer I gave.

Q. Is that true? A. So far as I know, it was.

Q. You cannot remember now how you were paid? A. I have not had any occasion to check it recently.

Q. Could you have been paid by check signed by one George Wong? A. That name has no familiarity to me at all.

Q. How about Wong Doo Hing? A. No.

Q. How are you usually paid in these cases? (692) A. In these particular cases?

Q. 503 actions referred to you by Sing Kee. A. Some of the people paid me in dribs and drabs, some of them paid promptly.

Q. How do you receive money, though, directly or from Sing Kee? A. Most of the time Mr. Sing Kee collected the money for me.

Q. And he would forward it to you? A. That's correct.

Q. What would you do with it when you got it? A. I would use it.

Q. How would you use it? Where would you put it? A. I would put it in my checking account.

Q. Where is that? A. In the Trust Company of North America, on 115 Broadway.

Mr. Goettel: Will you repeat that answer, please?

(Last answer read)

Q. Did you keep any records concerning these payments to you? A. Yes, I kept some records.

Samuel B. Waterman—for Defendant—Cross

Q. What sort of books and records do you keep? (693) A. I have a check account and with each one of these cases in the case itself I keep a record.

The Court: Excuse me. Do you write the receipts down in check book stubs?

The Witness: Yes.

The Court: All of them, when they are paid?

The Witness: It wouldn't make any difference, whether cash or check. We put what it refers to down in the check book.

Q. Do you believe that your answers to the questions as to what bank you put these funds into and what sort of books and records you keep—do you believe your answers to those questions incriminate you?

Mr. Stim: Your Honor, I object to that.

The Court: Sustained.

Mr. Stim: That is a statement and I think it is very, very unfair to make that statement.

Mr. Goettel: Your Honor, may I approach the bench?

(The following discussion took place at the side bar out of the hearing of the jury.)

Mr. Goettel: He testified before the Grand Jury to the exact same questions stating that his answers (694) would incriminate him, and he claimed his privilege, Fifth Amendment, not to answer them. I want to bring that out.

Mr. Stim: Well, your Honor, may I say this. It is prejudicial and it is unfair and it is in violation of the rights of any witness to refer to any invocation

of his Fifth Amendment, and the Supreme Court has held if at any time a prosecutor asks a witness whether or not he invoked the Fifth Amendment in the presence of a jury, that would be reversible error.

Mr. Goettel: Can you tell us in what case that was?

Mr. Stim: Wait a minute. I am making a statement.

The Court: Wasn't there a case that went up from this court where the use of it was sustained?

Mr. Goettel: I don't remember any case on it, but I know this, your Honor. Any cases concerning the point, concern the defendant on the Fifth Amendment.

Mr. Stim: But, your Honor, he is not invoking the Fifth Amendment now. Suppose I have invoked the Fifth Amendment in 1956.

The Court: Why can't he show that he did before the Grand Jury?

(695) Mr. Goettel: It is a prior statement, contradictory statement before the Grand Jury.

Mr. Stim: It is the most prejudicial thing.

Mr. Goettel: I know it is prejudicial. It shows the man's testimony is false.

Mr. Stim: And if your Honor will permit it, I will ask for the withdrawal of a juror. It is very unfair.

Mr. Goettel: If your Honor please, the defense has called this witness. They have used him to give testimony to their own interests and he has given substantial testimony for them, much of which he could not give before the Grand Jury. I intend to show the contradiction.

The Court: As a matter of fact, you asked the same thing yourself.

Mr. Stim: What?

Mr. Goettel: About the Fifth Amendment.

Mr. Stim: No, I said, did you testify in the first trial before the Grand Jury? He said, "No, I invoked the Fifth Amendment." He is the one who invoked the Fifth Amendment. That is the first time I ever heard it.

The Court: You may ask him if he invoked it (696) before the Grand Jury.

Mr. Stim: May I say this, your Honor. Your Honor can see very well, he is depriving this man of his constitutional rights and depriving any client of his rights.

The Court: As a witness, he can do that.

Mr. Stim: The other people stated they invoked the Fifth Amendment. If he wants to admit it, all right.

The Court: Withdraw this question.

Mr. Goettel: Ask him whether he claimed it.

The Court: I will pass on that.

(End of discussion at side bar out of the hearing of the jury.)

Mr. Stim: Is that question being withdrawn?

Mr. Goettel: I will withdraw that question.

Q. Mr. Waterman, were you asked the following questions before the Grand Jury. These are the questions only, Mr. Stim.

Mr. Stim: Well, wait a minute. All right, go ahead.

Q. "Q. When you received these various payments, what did you do with them?"

And the next question was——

(697) Mr. Stim: Your Honor, if that is the answer that we talked about, and I think before it was answered, I ask your Honor to rule on the admissibility of that answer.

Mr. Goettel: I am not asking for the answer to that question.

The Court: I will sustain his objection now. You may ask him certain other questions.

Q. And were you asked before the Grand Jury as follows, the following questions:

"Q. Where would you deposit them? What bank?"

Were you asked those questions? A. I assume that I was, if you have it there, in the minutes.

Q. Were you also asked this question:

"Q. What sort of books and records do you keep?"

A. I have no recollection whether I was asked that. If you have it there, I will concede that I was asked it.

Q. Do you recall the answers you gave to those questions? A. I do not at this time.

(The following discussion took place at the (698) side bar, out of the hearing of the jury.)

Mr. Goettel: I now propose to ask him if he proposes to read the answers to those questions. If not, I will ask him that.

The Court: Do you state that he raised the Fifth Amendment before the Grand Jury?

Mr. Goettel: Yes.

Mr. Stim: Your Honor, is that inconsistent with the statement that he gave here about the deposit in the Trust Company of North America? This is not inconsistent.

The Court: Can't he show that?

Mr. Stim: No.

The Court: That he raised the Fifth Amendment in response to these questions?

Mr. Stim: He cannot, your Honor.

The Court: Why not?

Mr. Stim: That would not be inconsistent. The man refused to answer at one time.

Mr. Goettel: Would this be proper: Would your answers, or your answers to those questions, be incriminatory?

Mr. Stim: No.

Mr. Goettel: If he says no, then I can ask (699) him.

Mr. Stim: If you ask that question, I will ask for the withdrawal of a juror.

The Court: Can you ask him? Can you ask him, "Did you raise the question of a Fifth Amendment?"

Mr. Stim: No.

The Court: Icannot possibly see any objection.

Mr. Stim: I cannot stop you, if your Honor will permit it.

(End of discussion at side bar out of the hearing of the jury.)

Q. "Where would you deposit them?"

"Q. What bank?", and then,

"Q. What sort of books and record do you keep?" When you were asked those question, did you reply that any answer might incriminate you?

Mr. Stim: Just one moment.

The Court: Why not do as I suggested?

Mr. Goettel: I thought I was.

The Court: I will rule on the question, but will you do as I asked, as I suggested it be asked, Did you say so and so before the Grand Jury?

Q. Did you claim your rights under the Fifth Amendment before the Grand Jury in answer to those questions?

(700) Mr. Stim: Your Honor, at this time I move for the withdrawal——

The Court: You make an objection?

Mr. Stim: I object to that question.

The Court: Overruled.

Mr. Stim: And I ask for the withdrawal of a juror.

The Court: Overruled, denied.

Mr. Stim: Exception.

A. I am sorry?

Mr. Goettel: Will you please read the question?

(Pending question read.)

A. If it is stated there that I did, I did.

Q. Yes or no. A. If it is stated there that I did——

Mr. Stim: Will your Honor state that every citizen——

Mr. Goettel: Your Honor——

Mr. Stim: Just one minute, you made a speech.

The Court: Address the Court.

Mr. Stim: I respectfully ask the Court to instruct the jury that every citizen has a right under the Constitution of the United States——

Mr. Goettel: I want these speeches before (701) your Honor and not for the jury.

The Court: He has a right to make that choice.

Mr. Stim: He has a right to make that choice and invoke his constitutional right, and that is not to be inferred as any evidence of guilt on the part of the defendant.

Mr. Goettel: Your Honor, I object to these continual statements on the part of the counsel in front of the jury.

The Court: There is no necessity for that at this time except to say that the raising of that issue, if it is raised by this counsel, or this witness, is not in any way to reflect upon the defendant.

Mr. Goettel: What was the last question and answer?

Mr. Stim: Your Honor, how many times must we have this question and answer?

The Court: Just wait a minute, Mr. Stim. Read the question.

(Pending question read.)

Q. I want a yes or no answer, whether to the best of your recollection you claimed the Fifth Amendment when you were asked those questions.

Mr. Stim: May I have the same objection, (702) your Honor.

A. I do not recall whether I did or not.

Q. Do you recall making these answers to these questions:

"Q. What bank? A. I refuse to answer, Mr. Goettel.

"Q. On what grounds? A. On the grounds that it may incriminate me."

Mr. Stim: Your Honor, I have an objection to all that line.

The Court: Yes, your objection has been noted and your objection has been overruled.

Q. Do you recall making those answers at that time? A. I don't recall it, but if it is down in the minutes there, then I made it.

Q. Do you recall making this answer to this question:

"Q. What sort of books and records do you keep? A. I refuse to answer on the grounds it may incriminate me."

A. I don't recall it but the same thing, if it is down there, then I made it.

(703) Mr. Goettel: I have no further questions of this witness.

The Court: Any redirect?

* * * * *

(706) SING KEE, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

* * * * *

Cross-Examination by Mr. Goettel:

* * * * *

(862) Mr. Stim: If the District Attorney will give us the total, maybe I will concede it and we wouldn't have to go through it, total admissions.

Mr. Goettel: My total admissions between mid 1950 and mid—rather, late 1952 is about 60.

The Witness: 60?

Mr. Goettel: 60.

The Court: Do you want to concede it?

The Witness: Within a period of——

Q. A little more than two years. A. That may be true. I am not going to dispute that your Honor.

(863) Mr. Stim: I will concede that. There is no mystery about it.

The Court: It is conceded.

Mr. Stim: 60 admissions of children were brought in on these papers.

Q. In addition to the 60 who got in in this little over two-year period, for how many others did you make application? A. A great many of them. I can't count them.

Q. Might it be as many as 200? A. Well, I don't think as many as that.

Mr. Stim: Don't shake your head. I can't hear you.

A. It would be just guessing. I don't think as much as that.

Q. And what was the average amount that you netted for services during these years for these boys for whom you made application?

Mr. Stim: I object to that, your Honor. That is not relevant in this case. If an application is made, he is not charged with violating the law because he made an application or because he engaged in this business. That is not charged as being unlawful.

The Court: I will allow it.

(864) Mr. Stim: Objection.

The Court: What was the average amount?

The Witness: A little over a hundred dollars each.

Mr. Stim: What was the answer?

The Witness: A little over a hundred dollars each.

Q. You cleared a hundred, that is after disbursements? A. Yes, that is correct.

Q. Now, these services of which you speak, can you give the jury some estimate—let us take 1951 as the year.

In 1951, what per cent of your income came from travel commissions and what percent came from these services? A. I have some restaurant income and so forth, too. I have to refer to my income tax.

Q. Confine it simply to the travel agency— A. I am not going to get into a guessing contest.

Q. I am not asking you to guess. Simply forgetting about your restaurant interests and forgetting about your real estate interests and your dividends and stocks, anything else, forgetting about all that, (865) just the travel agency.

Mr. Stim: I object to that. How is that relevant?

The Court: Overruled.

Q. Just the travel agency. What percentage of the gross income of the travel agency came from commissions— A. I have to refer to my income tax return now. I am not trying to guess.

Q. Give us your best recollection. Do you have any recollection?

The Court: What is the specific question?

Mr. Goettel: 1951.

Q. In 1951 what percentage— A. I would have to guess.

The Court: Wait until he asks the question.

Q. In 1951, from the China Overseas Travel Service only, what percentage of gross income came from travel commissions and what per cent came from services, roughly? A. I can't define the percentages. I would say the gross income now without deduction for expense must be over $1[illegible] (866) a year.

Q. I do not want sums, Mr. Kee. I am asking you for percentages. A. I can't subdivide these categories at the present time. Just what you are asking me now is a matter of memory.

Q. The travel commisison is quite a different thing from the services? A. Yes.

Q. And you kept a very accurate record of your travel commissions? A. I have to, yes.

Q. Would you say you made more money from travel commissions or did you make more from services? A. I can't answer that question without referring to my records.

Q. All right, I will refresh your recollection.

Mr. Goettel: Will you mark this for identification?

(Government's Exhibit 17 marked for identification.)

Q. I show you Government's Exhibit 17 for identification and I ask you if you can tell us what it is (handing to witness.)

Mr. Stim: Your Honor, I do not want to identify it. Just did he see it and then we will see from that point on.

(867) A. 1950 income tax.

Q. 1950 or 1951? A. For the year 1951.

Q. That is your income tax? A. That is a copy of my income tax return.

Q. Now, if you will turn to the page that concerns your travel agency and tell the jury from this about what per cent of your income came from commissions and what came from services.

Mr. Stim: Your Honor, I object to using any of this information in that record on the ground that, as I understand the law to be, information in an income tax report is confidential and cannot be used for any purpose except in an income tax case where a man is charged with evading the income tax law.

Mr. Goettel: If your Honor pleases, Mr. Stim's knowledge of the law is incorrect.

Mr. Stim: I admit that it is possible.

Mr. Goettel: It is confidential but there is access to them granted to the United States Attorney's office or to the Justice Department for use in criminal proceedings, and they are public records, the return, that is, which may be used for impeachment purposes.

The Court: I will allow it.

(868) Mr. Stim: May I have an objection? I am not certain about the law.

Q. Have you refreshed your recollection? A. May I have this with me while you are questioning?

Q. Oh, yes.

Have you refreshed your recollection from your record? A. Yes.

Q. Now, tell the jury approximately what per cent of your income came from services and what came from commissions? A. Commissions, $6,100——

Q. Just give us rough percentages.

Mr. Stim: Let us have the amounts.

Q. All right, go ahead. A. $6,127.

The Court: This is in 1951?

The Witness: For the year 1951.

A. Services $13,393.

Q. So on a gross basis the amount you received from services is twice that you received from commissions?

Mr. Stim: Your Honor, that is argumentative. We have the figures. The jury, I think, knows how to add.

The Court: Objection sustained. No use (869) getting excited about it.

Q. Your testimony, from your refreshed recollection, is that income from services was a little under $13,400; correct?

Mr. Stim: Your Honor, we have that already.

The Court: Yes, that is in evidence. Sustained.

Q. How much, with your refreshed recollection, did you pay in legal fees during that year?

Mr. Stim: I object to that again, your Honor, to that testimony, on the same ground as before.

The Court: Overruled.

A. This is the legal fee sent to Mr. Booth. $1,300 to Mr. Booth alone. It doesn't include the fees paid to Mr. Harry Dow.

Q. You did not feel like deducting those fees? A. No. I am taking the net in already by that time.

Q. In other words, the services don't include the sums you received and paid out in cash? A. Not the local fee in New York City.

Q. Actually the total services is probably a great deal greater than $13,000; is that right?

Mr. Stim: I object to that. The money was paid over to other attorneys for legal services.

The Court: This is proper cross-examination. (870) Overruled.

Mr. Stim: All right.

The Court: All right, repeat the question.

(Question read.)

The Witness: Read it again, please.

(Question reread.)

A. The gross, yes.

Q. Now, if the net figure of $13,400 is substracted by the payments listed there to Mr. Booth in the sum of $1,300, I believe it leaves a figure of about $12,000 for services.

Mr. Stim: Your Honor——

The Court: That is arithmetic. I think that would have to follow.

A. This is in the record, isn't it?

Q. Yes, it is in here. What did you do to earn $12,000 services during 1951?

Mr. Stim: Your Honor, I object to it. We had it over and over again. He stated what he has done.

The Court: I will allow it.

The Witness: You will have to read the question over again.

(Question read.)

A. For all the services that I previously said here.

(871) Q. What was that? A. They are not all interpreter's fees, not all immigration fees. They are also for my services outside of the travel service.

Q. What did you do outside the travel service? A. I represent the Chinese——

The Court: What is that?

The Witness: I represent Chinese in various organizations there. I get paid for it.

The Court: You represent; what do you mean by that?

The Witness: Well, what I mean to say is this is not all immigration fees.

The Court: Tell us what it is, then.

The Witness: It represents—the outgoing fees are included with the incoming fees.

The Court: What is included in this incoming figure of $13,393 other than matters relating to immigration?

The Witness: Interpreter's fees and going to——

Mr. Stim: A little louder so I can hear you.

A. For service charges for outside work.

The Court: What kind of outside work?

The Witness: Well, making leases out and so forth.

(872) The Court: Making out leases for people?

The Witness: I wouldn't make them out. I would go to lawyers with them. Interpreter's fees, that's all.

The Court: What is that?

The Witness: Interpreter fees.

The Court: Solely as interpreter's fees.

The Witness: Yes.

The Court: So the only thing was interpreter's fees; is that right?

By Mr. Goettel:

Q. How does that real estate work get connected to the China Overseas Travel Service? A. That real estate is located at 11 Mott Street. It is a tenement building. It is owned solely by my family. It is on my wife's name except one or two qualifying directors' shares.

Q. And that was the only real estate work for which you had to do any interpreting? A. No, for outside interpreter work, not that.

Q. How was your outside interpreter work connected with China Overseas Travel Service? A. I would say at least two or three thousand dollars that would be outside work. Would you want that answer there? (873) I don't want to describe it so completely.

Q. I want to know how it is connected with the China Overseas Travel Service. A. It isn't.

Q. That is your answer, it isn't connected; but it so appears on your income tax, doesn't it?

Mr. Stim: Your Honor, it says nothing in the income tax.

A. I don't think it shows that.

The Court: If there is a question, answer the question. If there is a statement, disregard it.

Q. Is there contained in the $13,000 anything other than from the China Overseas Travel Service in the 1951 return? A. It is not so stated in the income tax return. It is my personal services, for money I received. It is not connected. May I have that tax return again?

(Mr. Goettel hands document to witness.)

A. Commission for services. That doesn't call for——

Q. It is not connected with these services here? A. Not all of it. Some of it is.

(874) Q. What sum? A. I say outside of maybe two or three thousand dollars I would receive somewhere else as interpreter fees for various other functions.

Q. But you included them under your income from China Overseas Travel Service? A. That is my personal income return. It is not China Overseas' income tax return.

Q. Will you read to the jury what it says here, right up there?

Mr. Stim: He doesn't have to read it to the jury. Let him look at it to refresh his recollection.

Mr. Goettel: I will read it to the jury.

Mr. Stim: Your Honor, it is not in evidence.

The Court: It is not in evidence.

The Court: You tell the jury, refreshing your recollection——

A. Why don't you show it to them?

The Court: Wait until he asks the question. You constantly interrupt. Please don't.

Q. You tell the jury, with your recollection refreshed, what you typed in above this "Services" (875) as to what business or profession it pertained. A. Let them examine the return and be through with it.

Q. They can't.

The Court: You tell them.

The Witness: Shall I say?

The Court: Yes.

A. The services there is not totally from the service——

Q. Just tell them what it says above. What have you typed in above? A. "Nature of business, travel agent; business name, China Overseas Travel Service; business address, 11 Mott Street."

Mr. Goettel: Thank you. Mark this for identification, please.

(Government's Exhibit 18 marked for identification.)

Q. Can you identify this, Government's Exhibit 18 for identification? A. It is a copy of my income tax for 1952.

Q. Will you refer to the page concerning the China Overseas Travel Service, page 4?

Mr. Stim: Your Honor, may I have an (876) objection on the same ground?

The Court: Yes. Overruled.

Q. And with your recollection refreshed, will you tell us approximately what percentage of your income came from commissions and what was——

The Court: Give us the figures.

Q. Give us the exact figures, if you prefer. A. Commission, $4,363; services, $12,005——

Mr. Stim: How much?
The Witness: It is blurred.

A. (Continuing) We will call it $12,510 for the purpose of this hearing. It is blurred.

Q. That is close enough. Roughly $12,500.

And what were your legal disbursements that year?

The Court: That is for legal fees.
Mr. Goettel: Legal fees, 1952.

A. This legal fee——

The Court: Just tell us what it is.
The Witness: $1605.

Q. Did that include Mr. Dow's? A. No, no local people.

The Court: Just to Booth?

(877) The Witness: Booth and maybe somebody else. I don't know.

The Court: Where else would it be—other lawyers?

The Witness: In Washington, yes.

The Court: Who else?

The Witness: Mr. Warner H. Parker and Lambert O'Donnell.

The Court: Did you send out any of those little slips to the Government as to payments?

Mr. Stim: Your Honor, that is not required unless the payment exceeds —

The Court: I am just asking him if he sent out any.

Did you send out any slips showing the persons to whom you made payments? Is it over $600?

The Witness: I don't think I did on legal.

The Court: All right.

By Mr. Goettel:

Q. This leaves you with a net after services which you will admit to of approximately $11,000,

Mr. Stim: Your Honor, what is that question? I object to that statement.

The Court: Sustained in that form. (878) The objection is sustained.

Q. How much does that leave you net for services after deduction of legal fees? A. I will have to refer to the income tax return.

Mr. Stim: I object.

The Court: It is a little less than $11,000.

Q. Will you tell the jury what you did for that $11,000, what services you performed? A. Will you show me the tax return again? I might refresh my memory with the tax return.

Q. Your attorney does not believe you understand the question. I am asking you what services you performed for that $11,000?

The Court: The balance between the $12,510 and the $1605.

The Witness: This is for the year 1952 you are talking about?

The Court: 1952, yes.

A. Outside of approximately between $2000 and $2500 which I received for interpreter's fees other than Immigration and Overseas work, this is all my earning in China Overseas Travel Service.

(879) Q. What services did you perform? A. Interpreting where I am called out.

Q. I believe you testified earlier that you expected to make an interpreter fee in the Sum Yuen Quay case in the event that the court action came on? A. That's what I said.

Q. Mr. Waterman has tried some of these court actions, has he not? A. Maybe one or two. That's all I know.

Q. Were you the interpreter at those court actions? Yes or no. A. No.

Q. Were you present in court? A. No.

Q. I believe Mr. Waterman has had certain examinations conducted of a number of witnesses in these court actions you referred to him; is that correct? A. Yes.

Q. Do you appear as interpreter in any of those? A. No.

Q. Do you remember a case tried over in Newark in 1953 concerning a passport applicant for whom you (880) had papers prepared? A. I was in court then.

Mr. Stim: Answer yes or no.

The Witness: Yes.

Q. Were you the interpreter? A. Yes.

Q. Think about it for a moment. Were you the interpreter? A. I was present in court. I don't know whether I was used as the official interpreter or not.

Q. Were you the one who stood up here and interpreted back and forth? A. No. I wasn't a court interpreter.

Q. How often have you appeared as an interpreter in the courts?

Mr. Stim: Your Honor——

The Court: Confine the period.

Q. Let us say from 1949 on. A. Outside of this appearance in court in Newark, I don't think I appeared in any court.

Q. How many times have you appeared——

Mr. Stim: Your Honor, I object to any——

The Court: There is no question yet.

Mr. Stim: Interpreter in court. (881) He didn't say his services were for interpreter in court.

The Court: I think that is on the record.

Q. How many times did you appear before the Immigration Service since 1949 as an interpreter? A. A number of occasions. I can't remember.

Q. How many times? A. No. I can't remember.

Q. Can you mention any specific cases? A. I wouldn't try and attempt to figure because I say it may be a great many.

The Court: Where did you go with these people who wanted leases drawn?

The Witness: To different attorneys' offices and so forth.

The Court: Which attorneys' offices?

The Witness: Not Waterman; I know that. Whenever they come.

(882) The Court: Various attorneys?

The Witness: Yes.

The Court: Did you accept a fee before you went?

The Witness: No. After it was finished——

The Court: When did you take the fee?

The Witness: After my services was complete they gave me what they wanted. I didn't ask them. It's for the year.

* * * * *

(967) CHARGE OF THE COURT

(LEVET, J.)

The Court: Ladies and gentlemen of the jury:

You are about to enter upon your final duty in this case and decide the facts. My function is to instruct you as to the law that applies, and it is your duty to accept the law as I state it to you and to apply it to the facts as found by you from the evidence.

You are the sole and exclusive judges of the facts. You alone determine the weight of the evidence, the credibility of the witnesses and the reasonable inferences to be drawn from the evidence. You are to approach your duties in a complete attitude of fairness and impartiality, and to appraise the evidence calmly and deliberately and without the slightest trace of sympathy, bias or prejudice for or against the Government or the defendant as parties to this litigation.

The fact that the Government is a party here entitles it to no greater and to no less consideration than that accorded to any other party to a litigation. All parties stand as equals before the bar of justice.

(968) This case must be decided within the charges made against the defendant, Sing Kee, as contained in the indictment.

The indictment is merely a written accusation. It is no evidence of proof of the defendant's guilt. You will not give any weight whatsoever to the fact that an indictment has been returned against the defendant. It does even create, nor should you permit it to create, a suspicion of guilt.

The defendant is on trial upon an indictment which originally contained five counts. He has entered a plea of not guilty, and in denying the charges has put in issue the essential elements of the indictment.

Count 5 of the indictment was dismissed by me at the close of the Government's case. This is the count which charged the defendant with wilfully and knowingly making a false statement in an application for a passport in the matter of Sum Nin Oón. This charge is no longer before you, and I charge you as a matter of law to disregard any testimony submitted in support of the fifth count of the indictment, namely, the testimony of the witness Sum Yuen Quay, also known as Chin Kung Chee.

(969) However, this testimony may be considered by you for whatever it is worth with respect to the conspiracy alleged in Count 1.

The defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. This presumption continues in his favor throughout the entire trial and even during your deliberations in the jury room. It is removed

only if and when guilt is established beyond a reasonable doubt.

The burden of proof is upon the Government to establish the guilt of the defendant beyond a reasonable doubt. The burden never shifts but remains with the Government throughout the trial.

Now, what is a reasonable doubt? A reasonable doubt means a doubt founded upon reason and arising from the evidence or the lack of evidence in the case. It does not mean an imaginary doubt, or a whimsical or capricious doubt, nor is it a doubt based upon sympathy for a defendant.

When all of the evidence in the case, carefully analyzed, compared, and impartially weighed by you, produces in your minds a settle conviction or (970) belief of the defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs, when it leaves your minds in the condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then, and in that event, you would be free from a reasonable doubt, you would be convinced beyond a reasonable doubt and would then be required to find the defendant guilty as charged.

Absolute mathematical certainty is not required but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon.

On the other hand, if, after a fair and impartial consideration of all the evidence, you candidly and honestly say that you are not satisfied of the guilt of the defendant, or that you do not have an abiding conviction of his guilt which amounts to a moral certainty, then you have a reasonable doubt and you should find the defendant not guilty.

You are not to be concerned with the question of punishment to be imposed in the event that (971) you find the defendant guilty, as charged. That is a matter which is exclusively for the Court.

In this case, as in most criminal cases, the Government offers direct and circumstantial evidence.

Direct evidence is where a witness who was a participant to the commission of an act testifies to what he saw, heard, or discovered what he knows of his own knowledge—something which comes to him by virtue of his senses.

Circumstantial evidence is that evidence which tends to prove a fact in issue by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the facts exist which are sought to be established. It means that you take one set or state of facts, one circumstance or a set of circumstances, produced before you by evidence, and from those facts reason to a conclusion.

This is legal evidence and you must act upon it as if it were direct, when it is satisfactory to you beyond a reasonable doubt.

However, with respect to circumstantial evidence, if reasonable inferences to be drawn from (972) the evidence lead to two conclusions, one favoring guilt and the other favoring innocence, then it is your duty to accept that which favors innocence.

If the facts and the circumstances and the fair and reasonable inferences exclude any reasonable theory of innocence, and indicate as the only reasonable theory to be deduced therefrom the guilt of the defendant and provided they do so beyond a reasonable doubt, then a verdict of guilty is proper. No conviction can be based upon suspicion conjecture or probabilities.

With these general instructions, let us turn to the specific law upon which the indictment is based and the facts in this case.

Section 1542 of Title 18 of the United States Code
notated declares that:

"Whoever wilfully and knowingly makes any fa
statement in an application for passport with int
to induce or secure the issuance of a passport un
the authority of the United States, either for
own use or the use of another, contrary to the la
regulating the issuance of passports or the ru
prescribed pursuant to such laws; or

(973) "Whoever wilfully and knowingly uses
attempts to use or furnishes to another for use a
passport the issue of which was secured in any w
by reason of any false statement—" shall be gu
of criminal conduct.

The indictment, as it now stands, contains four count
that is, it charges four separate crimes. I shall first
cuss Counts 2, 3 and 4, since they all charge the same k
of criminal violation, but involving different persons. Th
counts, namely 2, 3 and 4, charge the defendant w
'making a false statement, wilfully and knowingly,' in
application for a passport, with an intent to induce
secure the issuance of a passport for the use of anot
contrary to law, by submitting an affidavit to the Un
States Consul in Hong Kong in support of the passp
application, stating that the applicant was the son o
certain individual when, in fact, the defendant then
knew such was not the case.

In Count 2, the defendant Sing Kee is charged with
quitting an affidavit to the United States Consul in H
Kong in support of an application for a passport in
name of Ng Quock Keung, (974) stating that the passp
applicant was the son of Ng Mong On, when, in fact,

defendant knew that the passport applicant was not the son of Ng Mong On.

In Count 3, the defendant is charged with submitting an affidavit to the United States Consul in Hong Kong in support of an application for a passport in the name of Jew Sun Ai, stating that the passport applicant was the son of Jew Ing Gim, when, in fact, the defendant knew that the passport applicant was not the son of Jew Ing Gim.

In Count 4, the defendant is charged with submitting an affidavit to the United States Consul in Hong Kong in support of an application for a passport in the name of Moy Hing Mee, stating that the passport applicant was the son of Moy Mun Sing, when, in fact, the defendant knew that the passport applicant was not the son of Moy Mun Sing.

It is apparently not disputed here that the defendant caused to be submitted affidavits in behalf of the applications alleged in Counts 2 through 4. If you should decide that the passport applicants were, in fact, the sons of the individuals named in Counts 2, 3 and 4, then you need go no further on these counts since the affidavits will not (975) have been false.

However, if you conclude that the passport applicants specified in Counts 2 through 4 were not the sons of the named individuals, then you will have concluded that the affidavits were false.

But the mere fact that the defendant may have submitted false affidavits does not of itself mean that he is guilty of any crime. The false affidavit must have been made wilfully and knowingly with intent to induce or secure the issuance of a passport. You must decide whether the defendant, in submitting the affidavits, made false statements

wilfully and knowingly, in the knowledge that the passport applicants were not, in fact, the sons of the individuals and families named in Counts 2 through 4, with intent to secure the issuance of passports to such persons.

The term "wilfully and knowingly" as used in the statute signifies that the offender must have known what he was doing and with such knowledge proceeded in violation of the statute.

The word "wilfully" means in a wilful manner, by design, with a certain purpose, or intentional.

(976) The word "knowingly" means with knowledge or with a clear perception of truth and is used in contradistinction to conduct which is innocent, ignorant or unintentional.

The purpose and knowledge of the defendant in making false statements, if, in fact, they were false, involve the issue of his state of mind. But it is, nevertheless, a factual issue to be resolved, as are any other factual issues by a consideration of the testimony concerning the activities of the defendant and by reasonable and logical inferences from the facts.

We have no instruments for peering into the brain of a defendant so that we can know what was on his mind at any particular time. But we can learn what is on a man's mind from what he says and does, and a man can be taken to intend the natural and reasonable consequences of his deeds.

The Government claims that the defendant, Sing Kee knew that the passport applicants were not the sons of the individuals under whose names they applied and that the individuals whose names were used created "slots" with the Immigration Service so that imposters might gain entrance to the (977) United States as citizens.

A law was passed by Congress in 1878 which provided that any child born abroad of an American father is also a United States citizen and entitled to enter this country.

The defendant makes no contention that the passport applicants were the sons of the individuals whose names were used. He denies knowing anything about them, saying merely that he prepared or caused to be prepared the affidavits for a fee as part of his service for customers of his travel agency.

If you find that the defendant did not know that Ng Quock Keung was not the son of Ng Mong On, then you must find him not guilty on Count 2. But if you conclude that Ng Quock Keung was not, in fact, the son of Ng Mong On, and that the defendant knew this when he aided in the submission of the affidavit in support of a passport, wherein it was stated that Ng Quock Keung was the son of Ng Mong On, then you will find the defendant guilty on Count 2.

You will be guided by similar considerations in your deliberations on Count 3 with respect to the statement in the affidavit that Jew Sun Ai (978) was the son of Jew Ing Gim.

The same principles are true with respect to Count 4, where the affidavit involved statements that Moy Hing Mee was the son of Moy Mui Sing.

It is not material in the indictment that the defendant did not personally submit the affidavits to the United States Consul in Hong Kong, since whoever wilfully causes an act to be done which, if directly performed by him or another, would be an offense against the United States, is punishable as if he performed the act himself. Likewise, one who either aids, abets, counsels, commands, induces or procures the commission of a crime is guilty as a principal.

The fact that some of the so-called "sons" did not ultimately enter the United States does not negate the alleged violation of the immigration law as charged in the indictment.

Now, we come to a consideration of Count 1 in the indictment, which charges the defendant, along with other specified and unspecified individuals, with having participated in a conspiracy to commit certain crimes relative to the unlawful entry of aliens into the United States.

(979) Count 1 relates to a conspiracy to violate certain specified laws.

I have already spoken to you about Section 1542 of Title 18, which concerns false statements made wilfully and knowingly in applications for passports with intent to secure the issuance of a passport contrary to law.

Section 1425 of Title 18, United States Code, is also specified in Count 1 of the indictment. This section provides:

"Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

"Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing," shall be guilty of a crime.

(980) In addition, Count 1 of the indictment also alleges a conspiracy to violate Section 1324 of Title 8, United States Code, which provides in part as follows:

"Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

"Wilfully or knowlingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation * * * an alien not lawfully entitled to enter into the United States, shall be guilty of a crime."

Count 1 reads as follows:

"The grand jury charges:

"1. Beginning in and about 1949 and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, Sing Kee, the defendant herein, did unlawfully, wiltully and knowingly combine, conspire, confederate and agree with Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Wing Gim (also known as Jew Ing Gim), Ng Yee Chor, (also known as Ng Quock Keung), Ng Jock Neuy (also (981) known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (also known as Sum Yuen Quay), and George Wong, named as co-conspirators but not defendants herein, and with divers other persons to the grand jurors unknown, to defraud the United States and to commit offenses against the United States, to wit, violate Title 18, Sections 1425 and 1542, and Title 8, Section 1324, of the United States Code."

"2. It was part of said conspiracy that the defendant and other co-conspirators would wilfully and knowingly encourage and induce the entry into the United States of Aliens not lawfully entitled to enter or reside under the laws relating to the immigration of aliens.

"3. It was further part of the said conspiracy that the defendant and other co-conspirators would make false statements and cause false statements to be made in application for passports in the names of Moy Hing Mee, Sum Nin Oon, Ng Quock Keung and Jew Sun Ai, with intent to induce and secure the issuance of passports under the authority of the United States for the use of others, contrary to the laws regulating the issuance of passports (982) (Section 211(a) and following, Title 22, United States Code), and the rules prescribed pursuant to such laws (Section 42.101 et seq., Title 22, Code of Federal Regulations).

"4. It was further part of said conspiracy that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of said applications in the names of Moy Hing Mee, Oon, Ng Quock Keung and Jew Sun Ai.

"5. It was further part of said conspiracy that the defendant and other co-conspirators would submit and file, and cause to be submitted and filed, the aforesaid applications with the consul of the United States of America in and for the consular district of Hong Kong in the British Crown Colony of Hong Kong.

"6. It was further part of said conspiracy that the defendant and the other co-conspirators would knowingly attempt to procure and obtain documentary evidence of citizenship for other persons not entitled thereto, by causing civil actions to be instituted and filed under Section 503 of the Nationality Act of 1940, in the names of Jew Sun Ai, Moy Hing Mee, Chin Nin Oon and Chin Seu Toon, to have them declared (983) citizens of the United States."

Overt acts:

"The grand jury further charges that in furtherance of the said conspiracy and to effect the objects thereof, the defendant and other co-conspirators performed the following overt acts:

"1. In or about 1949, in the Southern District of New York, the defendant Sing Kee had a conversation with Hom Wing Gim at 11 Mott Street, New York, New York;

"3. That on or about December 21, 1949, in the Southern District of New York, the defendant Sing Kee handed Hom Wing Gim an unsigned affidavit at 11 Mott Street New York, New York;

"5. On or about the 24th day of March, 1950, in the Southern District of New York, the defendant Sing Kee handed Ng Mong On an unsigned affidavit at 11 Mott Street, New York, New York;

"6. In or about April, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Chin Kung Chee at 11 Mott Street, New York, New York;

"7. On or about the 5th day of May, 1952, in the Southern District of New York, the defendant (984) Sing Kee handed Chin Kung Chee an unsigned affidavit at 11 Mott Street, New York, New York;

"8. In or about September, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with Moy Mun Sing at 11 Mott Street, New York, New York;

"9. On or about the 6th day of October, 1952, in the Southern District of New York, the defendant Sing Kee handed Moy Mun Sing an affidavit at 11 Mott Street, New York, New York, and

"10. In or about December, 1952, in the Southern District of New York, the defendant Sing Kee had a conversation with George Wong at 11 Mott Street, New York, New York (Title 18, Section 371, United States Code)."

A conspiracy to commit a crime is a distinct offense from the crime itself, which is the object of a conspiracy. There may be guilt as a result of a conspiracy even though its criminal objective is never accomplished.

A conspiracy may be defined as a combination of two or more persons to accomplish a criminal or unlawful purpose by concerted action. It is a partnership in a criminal purpose, with wilful and (985) knowing participation in the common end, and the gist of the crime is the confederation or combination of minds.

It is not necessary that there must be a proved agreement in words between each of the parties to the conspiracy, but you must find, however, from the action of the parties that there was such an agreement before you may convict. It is sufficient if you find beyond a reasonable doubt that they acted together with a common understanding and a common intent to accomplish an unlawful purpose. It is sufficient to show that the minds of the parties met in an understanding way so as to bring about an intelligent and deliberate agreement to do the act or acts charged, although such an agreement is not manifested by any formal words. A mutually implied understanding is sufficient so far as the combination or confederacy is concerned.

Charge of the Court

The agreement is generally a matter of inference deduced from the acts of the persons involved which are done in pursuance of an apparent criminal purpose. When parties enter into an agreement or conspiracy to do an unlawful act, they become agents for one another, and the act of one in (986) pursuance of the thing proposed is deemed to be the act of all and to make all responsible for that act.

If a scheme or conspiracy is formed by persons, that which any one of them does in pursuance of that scheme or conspiracy is binding on each of the persons who was a party to the scheme and anyone who joined and what any one of the conspirators does or says in pursuance of the scheme is binding on the others.

However, there can be no furtherance of a conspiracy that has ended or one that has not yet come into existence. Therefore, the declarations and acts of a conspirator do not bind the co-conspirator if made before the existence of a conspiracy or after it has terminated.

If and when you are satisfied beyond a reasonable doubt that the conspiracy charged did exist, then you must determine beyond a reasonable doubt whether the defendant was a member of that conspiracy. If the parties acted together to accomplish something unlawful, a conspiracy is shown even though the individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the others.

(987) All the conspirators need not be acquainted with each other. They may not have previously associated together. The defendant may know only one other member of that conspiracy. If, knowing that others have combined to violate the law, a party knowingly cooperates to further the objects of the conspiracy, he becomes a party thereto. It is not required that each of the conspirators shall participate in or have knowledge of all its operations.

He may join at any point in its progress and be held responsible for all that may be or has been done. All the conspirators need not have conceived the conspiracy or participated in its conception. Those who come in later with the knowledge of the aims and purposes of the conspiracy and cooperate in a common effort to obtain the unlawful result become parties thereto.

The first count of the indictment here charges one single conspiracy committed and participated in by the defendant, Sing Kee, and the co-conspirators Ng Chee Hung, Ng Sim Yee, Ng Mong On, Hom Ing Gim (also known as Jew Ing Gim), Ng Yee Chor (also known as Ng Quock Keung), Ng Jock Neuy (also known as Jew Sun Ai), Moy Mun Sing, Chin Kung Chee (988) (also known as Sam Yuen Quay), George Wong, and divers other persons to the grand jury unknown.

If you find that the Government failed to prove the one single conspiracy as alleged in the indictment, but tended to prove a number of related and different conspiracies involving various parties, even though the conspiracy to procure citizenship unlawfully and to make false statements in applications for passports is the crime proven in each different conspiracy, then it has failed to prove the crime set forth in the first count of the indictment, which is one single conspiracy involving all of the individuals named.

The crime charged in Count 1 of this indictment is one of conspiracy. The defendant is not charged in that count with having actually committed the acts which constitute a crime. It is, therefore, not necessary to prove as to that count that this defendant, Sing Kee, actually did any of the acts charged as part of the conspiracy, but merely that he conspired or agreed with others that those acts be done.

In determining whether or not a conspiracy existed, you are not to judge the character and ef- (989) fect of the conspiracy by dismembering it and viewing its separate parts, but only by looking at it as a whole.

As part of the conspiracy, it is charged that the defendant and other co-conspirators would prepare false and fraudulent affidavits in support of certain passport applications. An affidavit is false and fraudulent so long as any material part thereof is untrue and the conspirators who prepared it were so aware.

To convict the defendant of the crime of conspiracy as charged in the first count of the indictment, there must be a finding by the jury that the defendant entered into a combination or agreement to violate the law. Mere knowledge by the defendant that the law was being violated is not sufficient; mere aid or assistance to violate the law is not sufficient, unless such aid was given by the defendant for the purpose of carrying out the unlawful design of conspiracy as alleged in the indictment.

A defendant cannot be convicted of the crime of conspiracy because of his acquaintance or association with some or all of the parties named (990) as co-conspirators, unless it can be shown beyond a reasonable doubt that such defendant had guilty knowledge of, and with such guilty knowledge participated in the conspiracy in the furtherance thereof.

It is not necessary, in order to constitute a conspiracy to defraud the United States, that you find that the defendant conspired to violate all three sections of the United States Code that are specified in the first paragraph of the indictment, or that he did so in all the matters described in paragraphs 2 through 6. As long as you find that the defendant conspired to violate any one of the statutes or

in any of the matters described, that is sufficient to constitute a conspiracy to defraud the United States.

A conspiracy is not ended as long as the evidence shows an intention to continue on. Once a person is shown to be a member of a conspiracy, he is presumed to continue as such. Of course, a conspirator may withdraw from the conspiracy, but it requires affirmative and effective action thus to withdraw and terminate his liability in the conspiracy.

If you find circumstances of secrecy, (991) intrigue and deviousness, or attempts to conceal the real nature of the transaction, you may consider them along with other evidence in the case. It is not always possible to prove a conspiracy by direct evidence and, therefore, circumstantial evidence is necessary.

The reason for this is that conspirators do not usually openly proclaim their intentions. Their methods may be devious, hidden and secret.

In addition to the conspiracy, there must be an overt act performed by someone in the conspiracy to effect the objects of the conspiracy. Such an act is something more than evidence of the conspiracy. It constitutes the execution or part execution of the conspiracy.

The overt act need not be a criminal act, if considered separate and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or making a telephone call. It must, however, be an act which follows and tends to accomplish the plan or agreement and must be done knowingly in furtherance of an object or purpose of the conspiracy, and you will remember what I read to you with respect to the overt acts.

(992) The conspiracy is complete on the forming of the criminal agreement and the performance of at least one overt act in furtherance thereof. The overt act may

be that of only a single one of the conspirators and need not itself be a crime. It is unnecessary to allege overt acts on the part of each member of the conspiracy.

However, the Government must prove beyond a reasonable doubt that at least one of the overt acts set forth in the indictment was actually performed and committed by the person alleged therein to have done so.

The fact that an alien successfully gained entry into the United States under a false name and identity and has used that false name and identity in public dealings in the United States does not make his further use of this name in passport applications, or other sworn documents, legal, and if the defendant, Sing Kee, had knowledge that the alien was posing under an assumed name and, nevertheless, conspired with him in the filing of such false statements, or aided, abetted, counseled or procured the filing of such false statements, he is guilty of violating the laws of the United States.

(993) However, if you believe that the defendant acted without knowledge that the alien was posing under an assumed name, then he is innocent of the crimes charged.

The mere use of a different name, if for no illegal purpose, is not a crime.

The evidence in this case, as I see it, is as follows, and please keep in mind that my recollection, or that of counsel, is not to be taken in place of your own recollection of the facts or the evidence in the case:

As to Count 2, the case of Ng Quock Keung, the principal witnesses for the Government were, first, Dong Soon Chor, the alleged seller of the so-called paper, also known as Ng Mong On; second, Ng Yee Pon, the alleged purchaser, also known as Ng Gim Ting, and thirdly, Ng Yee Chor, the applicant, also known as Ng Quock Keung.

Dong Soon Chor, also as Ng Mong On, testified as follows: He was born in China on October 12, 1914, came to the United States under the name of Ng Mong On in 1934. He married in Hong Kong to Woo Lan Ying before he came to the United States; he had no children by her.

(994) In 1936, when he returned to China, he reported that a son, Ng Quock Keung, was born to him and his wife. His wife came to the United States in 1948.

In 1949, he saw a friend, one Woo Lim Jee or Gee, and through him he met Ng Yee Pon, also known as Ng Gim Ting, at the Pagoda Restaurant at Mott Street. Dong, his wife, Ng Yee Pon and Woo Lim Jee were present in January, 1950. Ng Yee Pon said he wanted to buy Dong's paper. Dong agreed to sell the paper for $1800. He received $300 and the balance after the boy came in. Later that day, Dong, his wife and Ng Yee Pon went to 11 Mott Street to see Sing Kee. Dong had known Sing Kee, he testified, from the On Leong Association or merchants' association, in which Sing Kee was secretary for a long time. He said he is a Dong man. He said that.

Dong told Sing Kee that he had sold the paper to Ng Gim Ting and told him to take care of it. Sing Kee, as the interpreter said, accepted to take care of it. Ng Gim Ting talked to Sing Kee alone.

A few weeks later, Dong went to see Sing (995) Kee at his office at 11 Mott Street. Dong told Sing Kee his family history. Sing Kee prepared two family histories, one for Dong and one for Ng Yee Pon.

Some weeks later, Dong went back to see Sing Kee. Sing Kee gave Dong an affidavit to sign and then had his wife sign affidavits, which are in evidence, and are available to you. Pictures of Dong as Ng Mong On and a boy purporting to be Dong's son, Ng Quock Keung, are attached.

Although the oath on the document appears to have been taken before Louis S. Treglia, Dong says he did not appear before Treglia or sign it before Treglia. Dong signed it at Sing Kee's. Dong gave his picture to Sing Kee to prepare the paper. He first saw the applicant's picture when he prepared this paper. He had never seen this person in the flesh before he saw this picture.

Later Dong saw the boy when he came into the United States. Dong and his wife prepared themselves to testify at the Immigration Service by reading the coaching papers on family history, which he said was prepared by Sing Kee. The boy was admitted and went to live with his uncle, Ng Yee Pon, (996) at Paterson, New Jersey. Over a week later, Dong went to Sing Kee's office with Ng Yee Pon and told him that the boy had been admitted and a few months later Dong, Ng Yee Pon and Ng Quock Keung went to Sing Kee's office and asked him to help get a certificate of citizenship for Ng Quock Keung. Dong signed a letter which Sing Kee gave him.

On cross examination, Dong admitted that he conducted his laundry business as Ng Mong On. At Ellis Island, his lawyer was Harry H. Dow, also known as Hom Yuen. He had known Ng Yee Pon before he met him at the Pagoda Restaurant in January, 1950.

The second witness was Ng Gim Ting, also known as Ng Yee Pon. He testified he was a restaurant keeper from Paterson, New Jersey, born in 1897, came here in 1913. When in China in 1947, the mother of Ng Yee Chor, apparently a distant cousin and who came in later as Ng Quock Keung, came to the boy to see him. In late 1949, he talked to one Woo at the Chinese Community School, who told him he knew someone who had a citizenship paper for sale. Woo introduced him to Ng Mong On. Dong apparently wanted $1800 for the paper, and Ng Yee Pon

said he would pay it, and they went to (997) Sing Kee to have it prepared. He told Sing Kee that he, Ng Mong On, sold him a paper, and he asked him to prepare the paper for him. He asked him how much he charged and Sing Kee said $400. Sing Kee told him to bring some photographs of Ng Yee Chor, of the boy.

A few weeks later, he again visited Sing Kee and took the pictures of Ng Yee Chor, the boy, to him and asked him if the paper was ready. Several months later he returned and Sing Kee gave him the paper and said, "Send it to boy." Sing Kee gave him a coaching letter, which he registered by mail to send to the Sing We Tong store in Hong Kong. He then paid $400 to Sing Kee. He also sent $200 to Ng Yee Chor at Hong Kong. He purchased an airplane ticket through Sing Kee for $800, eight or nine hundred dollars.

When Ng Yee Chor arrived in the United States, he took him to Paterson, New Jersey, the second day, where the boy went to school and worked in Ng Gim Ting's restaurant.

Ng Yee Chor testified that when he came to the United States he was Ng Quock Keung. He was born in Gim Jung Village, China, eighteen years ago. (998) His father was Hok Shuck and his mother is of the Lee clan. Neither his father nor mother has been in the United States.

He met Ng Yee Pon in China, came to the United States in March, 1951, and then, first using the name of Ng Quock Keung, he lived for a while at Hong Kong where, he said, Ng Yee Pon paid his expenses, paid his traveling expenses. He had a coaching paper in Hong Kong, which he received by mail, from which memorized the family history, and after being admitted, he saw Sing Kee with Ng Mong On.

So much for the Government's case on Count 2.

With respect to the defendant's case, Sing Kee said he was an interpreter for the Naturalization and Immigration

Service from 1919, I believe it was, to 1928. Since then he has operated the China Overseas Travel Service at 11 Mott Street. He assisted clients in filling out applications for passports and visas. As he said, he tries to "process the people coming over from Asia and Hong Kong," a service commencing about 1946 or 1947.

You heard his testimony with reference to Albert Kee, his brother, and Wilbur Chung, another person who came to the office from time to time; like- (999) wise his testimony with reference to Roland Crean, the stenographer.

Sing Kee himself testified in reference to this Count 2. This is the defendant's testimony with reference to Count 2. He saw Ng Mong On in March, 1950, when Ng came with his wife to see Sing. Ng Mong On wanted papers drawn so that his son could come into the United States. Ng gave him a certificate of identity and papers with family data. Sing does not remember anyone else with Ng except the wife, but he had sold tickets to Ng's constituents in 1947 or 1948. From these papers an affidavit was prepared, apparently was prepared in Harry Dow's office. Ng Mong On took papers and came back with some corrections, and these he gave to Roland Crean to do over. They were signed and notarized and Sing took two copies to Dow and two to Ng. Ng Mong On gave him the photos, paid him $100, and Sing paid Dow.

Later in the summer, Ng Mong On came back and said he would like to expedite the application (1000) with the State Department. Sing mentioned Booth as an attorney and sent it out to Washington. Still in the summer of 1950, Ng Mong On came back and ordered the ticket, and then Ng Yee Pon brought the money saying, "This is the money for Ng Mong On's ticket." When Ng Quock Keung came, Ng Mong On came to his office and said he wanted counsel.

Sing suggested Harry Dow. The boy was admitted. Ng Yee Pon gave him $300 and he paid one hundred to Dow and $75 to Booth. Sing says he never knew about the "slot" and he denied knowledge that Ng Quock Keung was Ng Yee Chor. He denied knowledge about the sale of the papers. He said no coaching papers were prepared in his office.

His brother, Albert Kee, did some typing of passport applications in his office. Wilbur Chung also worked in a printing and knows Chinese. So much for Count 2, in the Ng Quock Keung case.

As to Count 3, the Jew Sun Ai case, the principal witnesses for the Government were Hom Ing Gim, also known as Jew Ing Gim, the alleged seller of the paper, and Ng Yee Pon, the same person as Ng Gim Ting, the alleged purchaser.

Hom Ing Gim, also known as Jew Ing Gim, (1001) testified as follows: He is a member of the Hom family, born in 1905. He came to the United States in 1923, made his first return trip to China in 1930. His wife's name is Yip Shee. He returned here in 1932. He reported a child, Jew Sun Ai, born August 1, 1931, but no such child was ever born to him.

He knew Ng Gim Ting, also known as Ng Yee Pon, while on a ship to China in 1947.

In 1949, he returned and he went to work for Ng. Later he met Ng Yee Pon in Mott Street and Ng asked him if, when he went to China, he claimed any so-called "boy papers." Hom said yes, and he asked $1,000 for the paper.

Two days later they went to Sing's place to have the paper made. Ng Yee Pon told him, "This is Sing Kee." Ng went out first. Then Hom gave some coaching papers to the person he called Sing Kee's partner, apparently at Sing's request.

About two weeks later, Hom went back and signed the paper. He had never seen the picture of the applicant. He had given his certificate of identity to Ng.

A third time he went back to Sing Kee to get his papers, so-called coaching papers, which he (1002) says Sing Kee gave him. Later Sing Kee told him the boy would not come to the United States, they have to have blood tests.

Then Ng Yee Pon testified as to this case as follows:

In 1947, while he was in Toishan City, China, the mother and the father of one Ng Jock Neuy came to see him, just cousins, and after he came, returned to the United States, he spoke to Jew Ing Gim, also known as Hom Gim, about Ng Jock Neuy, which was in November or December, 1949.

Ng Gim Ting told Hom that he wanted to buy a paper. Hom said he had one for sale. The paper was in the name of Jew Sun Ai. The witness wanted it for Ng Jock Neuy, and he agreed to pay a thousand dollars for it, he said.

Two days later, as he testified, he went to Sing Kee's place to fix the paper. He told Sing he bought a paper from Hom Gim and tried to get a boy to come to the United States. Sing said that was all right, that it cost $200 apiece, to try to bring some pictures.

When Ng Gim Ting went out, Hom Gim was in the waiting room.

(1003) The next time Ng Gim Ting took pictures to Sing Kee, he was asked about the paper. A month later, he went back again and Sing give him the paper and a coaching book. These were sent to Hong Kong, to Ng Jock Neuy, at this store, and he paid Sing Kee $400 and sent Ng Jock Neuy two hundred for expenses, but he never paid Hom the thousand dollars.

The application, of course, was denied. Ng Jock Neuy, of course, did not come to the United States. The witness told Sing Kee, and Sing Kee asked if he wanted to appeal to the court and he said he did. Apparently an action was brought by Jew Ing Gim as father of the alleged Jew Sun Ai, and the attorney was Waterman.

In opposition and in defense of this Count 3, the defendant testified as follows:

The first time Sing knew Jew Gim was in 1949, was when Ng Yee Pon brought him to his office and he said, "They wanted some papers prepared for him." Ng Yee Pon told "us", "he is my cook, prepare the papers, and I will buy the ticket for him."

Then Jew Ing Gim brought the pictures. The conversation, he said, was with Ng Yee Pon. "Jew Ing Gim gave me a certificate of identification with two (1004) pictures." Jew Ing Gim said, "I want to make a paper for my boy." Either Sing's brother or one of the other boys in the office took them over to Dow's office and the papers were prepared there.

Jew Ing Gim came back in about two or three months, and towards December of 1952, Ing Yee Pon came in with a letter of denial and said he wanted to take court action. Sing recommended him to Waterman, and he filed a complaint.

Later, Ng Yee Pon came in and said he wanted to keep the complaint going. However, Sing doesn't remember seeing Jew Ing Gim on more than two or three occasions.

Sing says there was no talk of buying or selling a slot between Sing and Ng Yee Pon or Jew Ing Gim. But he was not informed that the boy for whom the application was made was not the son of Jew Ing Gim.

Waterman testified that either Albert Kee, the defendant's brother, or Wilbur Chung, came with Jew Ing Gim to his office in December, 1952, that Jew Ing Gim gave him an affidavit and he talked with him through either Wilbur or Albert, an dthe complaint was signed by Jew Ing Gim.

(1005) Sing paid Waterman $100. The case was discontinued in November, 1955. Waterman said he did not know anything was wrong.

Now, we come to Count 4, the Moy Hing Mee case. The witness for the Government here was Moy Mun Sing, who testified as follows:

Moy was born in Hoboken, New Jersey, in 1894. He made three trips to China. In 1919, he married in China, and there his wife gave birth to three boys and one girl. The girl was called Moy Fung Mee, the boys were called Moy Hing Kwong, Moy Hing Fong and Moy Hing Tung.

Moy reported his daughter, actually Moy Fung Mee, as a son under the name of Moy Hing Mee. The two boys, Moy Hing Kwong and Moy Hing Fong, apparently came to the United States without difficulty.

The third son, Moy Hing Tung, was in Hong Kong in 1952, and Moy wished to bring him in. He went to see Sing Kee, talked about the paper. Then he went back the next week. Sing's assistant showed him a picture and told him to go in to see Sing.

Sing told him of someone who had an interest in the paper, someone willing to pay $1500 (1006) with respect to this paper.

Moy paid Sing $50 for the fee on the Moy Hing Tung paper, and agreed to pay the rest, $450, I believe it was, but Moy Hing Tung never came to the United States. Moy also signed the paper for the admission of the fictitious

Moy Hing Mee, whoever he was, in Sing's office. He said he never saw the picture of the party or person posing as Moy Hing Mee, nor had he ever seen this person so pictured, in the flesh. This person apparently did not come in and he never got his $1500.

As to this case, Moy Mun Sing, the defendant Sing Kee testified as follows:

He said he met Moy Mun Sing first about May, 1952, at his office. Moy told him that he wanted to bring in his two sons. Moy had a certificate of identity. Crean prepared the papers, two different sets of affidavits, one for each boy, Moy Hing Tung and Moy Hing Mee. Moy gave him photographs and a memorandum of family history. The papers were sent to Booth to send to Hong Kong. Sing received $50 on each occasion.

Several months later, Moy returned to the office. He told Sing he wanted to file suit for (1007) both sons. Sing sent him to Waterman with his brother Albert, or Wilbur Chung. He came back later and again Sing sent him to Waterman.

Sing says he had no conversation with Moy about purchase or sale of a "slot." He says there was no conversation about a payment of $1500.

Sing denies any conspiring with anyone to violate the laws of the United States and denies that he ever prepared an affidavit known by him to be untrue or false.

Waterman also testified in this case that on December 4, 1952, Moy Mun Sing, with either Wilbur or Albert, Wilbur Chung or Albert Kee, came to his office. Moy gave him a copy of the affidavit. He prepared a complaint which was signed later by Moy Mun Sing. He testified Moy was at his office on November 22, 1955, with

an interpreter. He never paid a fee. Waterman withdrew from the case and he, Waterman, never knew anything was out of order.

So much for these counts, 2, 3 and 4.

As to Count 1, the conspiracy charge, the Government submitted testimony of the witnesses already mentioned. In addition, there were three other cases. The first of these was Chin Sung Hong, (1008) the Chin Sung Hong case. Here the witness for the Government was Chin Ming Mow, the radio and television repairman, who testified in English.

He said he was born in China in 1918, came to the United States in '29, returned to China in '33, married there in '34, had a son, Chin Sung Hong, born in 1936. He returned here in 1937, reported the birth of a son. Actually, he died some time before 1950.

In 1951, he went to Sing Kee's office and he told him he had a son and he wanted to bring him into the country. He asked Sing to help him and Sing helped him with the case.

Some weeks later he obtained the papers from Sing, he signed them before a notary public, copies were mailed to the consul in Hong Kong and then a boy using the name of Chin Sung Hong came to the United States in July, 1952. Chin Ming Mow had given Sing Kee $800 for the plane ticket.

Later he received notice from the Immigration Service to take a blood test. He went to Sing Kee, who told him to go Dr. Liu for a blood test. Dr. Liu reported to Sing Kee that the witness had Type A blood. The boy had a blood test at Ellis (1009) Island. The witness went to Sing Kee, who told him the blood test was incompatible. He told Sing Kee that if there was a blood test,

it wasn't his true son. Sing said, "I will try to do some other way to retain the boy here."

He had a blood test at Immigration and another at Dr. Sussman's office, which were also incompatible, and they were going to deport the boy.

Chin Ming Mow returned to Sing Kee, who told him to go to Waterman's office, but before going there, Sing told the witness—this is the testimony of Chin Ming Mow—that he should not tell Waterman about the boy not being a true son. Actually, the boy was not a blood son but only an adopted son. He paid Sing $800 and got back about $200.

On cross-examination, Chin Ming Mow said he believed until the boy came to Ellis Island that the boy was his true son. After he arrived, he learned his true son was killed.

Sing Kee went with him to Waterman's office, where the witness did not tell that the boy was not his blood son. Sing Kee was present when Chin Ming Mow signed the complaint. Sing denies telling (3010) Chin Ming Mow to conceal anything. He says the identity was not known until after suit was brought.

Then there was the case involving Wong Wing, and that was presented under the testimony of George Wong and Chin Way Mon for the Government. George Wong, also known as Wong Doo Hing, testified he was born in Kwantung, China. He and his wife had two children; a boy, Wong Wing, and a girl. He came to the United States, you will remember, at night in 1936 via the Michigan River, when a white man brought him over in a boat. He was never naturalized, never left the United States, and his wife and children never came here.

He had a good friend by the name of Chin Way Mon and with Chin Way Mon he discussed Wong's son, Wong

Wing, just prior to Chin's going to China in 1948. Chin informed him that he had a paper suitable for Wong's son to use to come to the United States. The paper was in the name of Chin Sen Loon.

Then a paper was prepared for the son in the office of Hom Yuen, or Tom Yuen, also known as Harry Dow. The witness George Wong identified the picture of his son and the affidavit here. The other picture was that of Chin Way Mon. George Wong (1011) paid Chin $500 plus some twenty to thirty dollars, and subsequently more, apparently totaling altogether around a thousand dollars. The son did not come here, as the application was denied.

George Wong went in to see Sing Kee in June or July or August, apparently in the summer season of 1952. He brought a paper from the consul's office and told him that the paper belonged to Chin Way Mon and had been denied, and asked Sing Kee if he could help him. Wong testified that Sing said, "I can recommend you a lawyer. * * * You have to take court action." And he told him that his name was Wong Wing.

Sing Kee mentioned Waterman as the attorney and told the witness what the fee would be. George Wong told Sing that he was trying to bring his son in under the name of Chin Sen Loon and that Chin Way Mon, the alleged father, was in Hong Kong. Sing told him someone had to sign the paper and he told Sing that Chin's eldest boy was here. Sing said, "Go to the lawyer's office to sign the paper."

About two weeks later he went to Sing's office when Chin Wah Loon, the son of the father Chin Way Mon, was there. Sing asked if his name (1012) was Chin Wah Loon. He recommended a lawyer and asked to have Chin Wah Loon sign the papers.

Later, after Chin Wah Loon returned to the United States, about April, 1954, Wong paid him $250 plus $30 for filing fees. Wong had met Sing Kee as a member of the draft board. Wong is not a citizen, but in 1940, when registering for the draft, he said that he was a citizen.

Then Chin Way Mon, the alleged father, testified that he was a laundryman, born in China in 1903. He was married in China before coming to the United States in 1922, made three trips back to China. He and his first wife had three sons, including one Chin Seu Loon, and this son, Chin Seu Loon, apparently died before 1946, and Chin Way Mon, the father, never reported the death of this son. He knew George Wong and with Wong Chin discussed this son and Wong said he wanted to bring him to the United States. Apparently his son may have been a godson of Chin Way Mon. There were papers prepared by Hom Yuen, Harry Dow, to bring this boy in.

The witness identified the picture as himself, Chin Way Mon, and "that is Wong Wing," apparently using the name of Chin Seu Loon on the affi- (1013) davit.

Before leaving for Hong Kong in 1948, George Wong gave Chin Way Mon $500. Wong Wing never came to the United States. After the witness returned to the United States from China, Chin Way Mon returned in 1953, he learned of this court action from Wong Doo Hing, and he went to see Waterman about 1955.

As to this case of Wong Wing, the defendant testified that George Wong may have been at his office, that one Henry Young came there in 1952 with someone who looked like George Wong. Sing says he never met Chin Way Mon, the father, but he did meet his son, Chin Wah Loon, in December, 1952, in his office, with one Henry Young, a distant relative of Sing's.

Yeung said, "This is the brother that we talked about that wants a 503 suit started." Sing gave him Waterman's card and sent him down there. Sing says he received no money and paid Waterman none.

Waterman testified with respect to this case that Chin Way Mon's son, Chin Wah Loon, came to see him about this case in December, 1952; that (1914) Chin Wah Loon told him he was a son of Chin Way Mon, that they wanted to bring in his brother, then in Hong Kong, where his father then was. Chin Way Loon brought the affidavits. Waterman conceded that Chin Wah Loon was sent by Sing Kee. An unverified complaint was filed, apparently because there was nobody who could legitimately verify it.

When Chin Way Mon returned in November, 1955, he went in to see Waterman and the case was discontinued. Waterman said he knew nothing was amiss in this case.

Then there was one more case involved in connection with the conspiracy, and I am sorry I am taking so long, but I am trying to cover the testimony completely, and that was the testimony involving Chin Kung Chee, also known as Sum Yuen Quay, in reference to the Sum Nin Oon case.

Here, Chin Kung Chee, also known as Sum Yuen Quay, testified as follows. Chin was born in China in 1898 and, under false papers, came to the United States under the name of Sum Yuen Quay in 1930, falsely claiming as his father Sum Wong Loy. He was married before he came to the United States. He had three children, two boys and one girl. A son (1015) was born after he arrived in the United States, and that was this Chin Nin Oon.

In May of 1952, he wanted to bring Nin Oon into the United States and he went to see Sing Kee to take care of it for him, prepare a paper for his son.

Chin signed an affidavit, he says, before Sing. He says he did not swear to the papers before a notary public. Sing had his certificate of identity. Chin paid Sing $200 for preparing papers, preparing the papers, and said he would pay Sing another $300 after his son came in.

About three months later he returned and the same year he went a third time to see Sing Kee, this time about the identification paper of his son. He told Sing that the identification paper was not right, as it was the Chin family, instead of the Sum family, and Sing said there was nothing he could do about it. The son never came to the United States.

He received a letter from Sing to come to his office. He went and saw him and he told Sing, "I tried to have some way to save my son's papers."

He testified that Sing said he hoped it can be saved. He signed a paper, a complaint, in the lawyer's of- (1016) fice. Later he signed a paper in Sing's office—I believe it is in evidence, on the bottom of the letter—which authorized the discontinuance of the case.

He maintains his bank account as Sum Yuen Quay, did not register for the draft. He told Sing at the time of the preparation of the paper that he had a son whose name was Sum Nin Oon. He wanted to bring his true blood son to the United States. He brought Sing his own and his son's photographs. He never saw the boy, Chin Nin Oon, mentioned as Sum Nin Oon in the affidavit. He received a letter from his son stating that his identification was found out by the authorities, and told this to Sing, who said, "Nothing can be done."

While at Sing's office, however, Sing told a man in his office to go to the lawyer with him and then he signed a paper in the lawyer's office.

In reference to the Sum Nin Oon case, Sing testified as follows: He said he first met Sum Yuen Quay in May or June of 1952, at his office. An affidavit for the admission of one Sum Nin Oon was prepared at his office. Sum Yuen Quay said he wanted to bring his son to the United States. Sing (1017) received a certificate of identity and other written information from Sum Yuen Quay. Sing collected $100 and paid Dow twenty-five to thirty dollars. He had to pay Crean $2 an hour for the affidavits.

Sing gave the affidavits either to Dow or Booth. In the latter part of 1953, Sum Yuen Quay told him that somebody went over his affidavits. Sing says, "I can't do anything further for you." He told Sum, "If you want to file, file 503," that it was his only possible way to appeal. He says he did not know that he, Sum, was a Chin. This was in 1952.

Mr. Stim asked, "Until 1952, did you know that he was a Chin?" And Sing said, "No."

He sent Sum to Waterman. Sum never paid Sing anything. The only pay Sing expected was if he went to court as an interpreter.

Waterman testified that Sum Yuen Quay, with either Albert Kee or Wilbur Chung, came to his office on December 22, 1952, and Sum gave him an affidavit with photographs and a complaint was prepared and signed. Waterman wrote to the complainant to come in, but he did not. He asked Sing to locate Sum, and he received a consent to discontinue from (1018) Sing, but signed by Sum. The case was discontinued.

There was other testimony adduced by the Government, that of Booth, Hom, Dow, Treglia, Dr. Sussman and Dr. Liu, physicians.

Booth testified that he had done work for Sing since 1927 or '28, and in 1949 he handled seventy-five to 100

cases referred to him by Sing and received $25 to $30 for each, and these checks were drawn to him by Sing Kee on the China Overseas Travel Agency.

Dow testified that he was a member of the bar in Massachusetts, admitted to practice in the Immigration Service, where he was formerly an interpreter, and in the years 1950 to 1952, Sing Kee referred to him seventy-five to 100 immigration cases, for which he received usually $25 each.

Treglia, notary public, testified he notarized papers either at Sing Kee's office or his office. The papers were brought by someone from Sing Kee's office, in which event the person signing the papers sometimes, at least, he conceded, did not appear before him. In some cases he went to Sing Kee's office where he apparently testified that in certain instances the papers were personally sworn to and in other cases they were not.

(1019) Dr. Sussman testified that he was a specialist in hematology and serology and made blood tests of Chinese. He explained the groupings and the method of exclusion. In the period of June, 1952 to March 12, 1956, he made seventy-three blood tests at the request of Dr. Liu; between September 8, 1953 and January 3, 1956, he made sixteen tests at the request of Sing Kee.

Dr. Arthur Liu testified that he had been a physician for twenty years but was not a serologist or hematologist, and although he had performed tests since 1922 in cases of disputed parentage, he does not perform all the tests but refers certain cases to Dr. Sussman. He has known Sing Kee for fifteen years as a patient and as family physician.

In 1952, he, Sing Kee, sent him about thirty cases; some came with Sing's brother Albert and some came with this Wilbur Chung of his office, all in Chinese.

He testified he examined blood of Jew Ing Gim, August 11, 1952; Chin Ming Mow, July 30th and August 26, 1952, at Sing Kee's request, and on July 30, 1952, I believe, he tested Chin Seu Hong at Ellis Island, also at Sing Kee's request.

(1020) Then the defendant presented a number of witnesses who testified as to Sing Kee's reputation for honesty, stating his honesty, truth telling and integrity were good. These witnesses were Judge Wahl, Paul Akst, a colonel; David DeVoto, a retired policeman; Paul Chang, a Lutheran pastor; Mary Banta, a missionary; Leon Michelini, a trucking executive; Dr. Francis K. Shepard, a Baptist pastor; Joseph O'Connell, and others.

Waterman testified generally that Sing Kee sent him immigration cases, including the Jew Ing Gim case, the Chin Way Mon case, the Sum Yuen Quay case, and the Moy Mon Sing case, sent him in 1952 fifty cases. Most of the time, as he testified, he received his money through Sing Kee.

When asked certain questions before the grand jury about his books, he denied knowing any irregularities.

On cross-examination, Sing Kee testified in part, as follows:

"Some of the affidavits were prepared on his typewriter by Cream, but were checked by Dow. Some 130 affidavits were either prepared or checked for Sing by Dow in the period between 1949 and 1952. (1021) and payments to Dow were on a cash payment basis.

Sing sent persons to the doctors for blood tests. He sent persons to Waterman, usually collected the retainers, put the money in an envelope and gave it to Waterman and said he transmitted all and kept nothing. He kept

the records of sales of tickets only. He said he recorded his service receipts on his diary; all were grouped and then the legal expenses deducted.

Crean, he said, was a stenographer with the Immigration Service for about thirty years. Sing said he had been a member of On Leong Tong, a Chinese merchants' association, for over thirty years, was a secretary up to 1939, and, I believe now, is a representative or director. Dong became a member about February, 1952, but Sing did not know it until 1953.

He does not recall Ng Yee Pon being present at the first time Dong or Ng Ming On came. He assisted Dong, as well as Ng Yee Chor, this person who came in as Ng Quock Keung, in getting certificates of citizenship. I believe he conceded some sixty admissions of children under the derivative citizenship in this period of two years, a little (1022) over $100 average.

In his 1951 income tax return, Sing reported $6,127 received as commissions from tickets, and $13,393 for services. He paid out $1,300 for legal services to Booth, leaving about $12,000 for services. Some of this is for services which he said were not related to immigration, and he had reference to interpreter's fees. This would take out about $2,000 to $3,000.

In his 1952 income tax return, Sing showed commissions of $4,363, $12,500 services; legal fees paid out, $1,605, leaving net for services about $11,000, of which $2500 was, as he testified, for interpreter's fees.

He testified he had never seen a halfgoon or coaching paper in his office. Until about thirteen years ago, laymen could practice before the Immigration Service. He said he was recognized as a representative prior to World War II.

Over fifty 503 actions were successful, most of them put off the calendar, and then he collected on some. He looked up a lot of people. He sent Albert Kee or Wilbur Chung to interpret. He said he was never paid for these services.

(1023) After Sum came to him in 1953 and told him it was discovered that he was a Chin, he did not tell this fact to Waterman and it was over two years and five or six months before Sum signed the consent at his office for the discontinuance of the case.

Sing denied that Dong was referred to as "Dong," denied the lack of oath by all the other affiants, and he denied all other involvements in the Ng Quock Keung case; likewise, in the Jew Sun Ai case, the Chin Way Mon case, Sum Yuen Quay case, and the Moy Mon Sing case, and so on.

Albert Kee, his brother, has had a dry cleaning establishment since at least 1950, but came to Sing's each day and worked.

Wilbur Chung owned a print shop for several years, the Asia Press, on 1st Street, but came into the office two or three times a week and on Sunday. Sing paid neither anything.

Sing, while with the Government, interpreted at hearings. He denies all wrongdoing.

So much for the summary of the facts in this case, which has taken a long time.

In your determination of the facts, you rely upon your own recollection of the evidence. What I (1024) have said from time to time, what I may say in this charge, or counsel may have said during the course of the trial or during their summations is not to be taken by you in place of your own recollection of the facts or the evidence in this case.

Nor are you to take into account or consider in any respect rulings made on any motions or objections by counsel. These related solely to matters of law with which you have no concern. With respect to those questions as to which objections were, in fact, sustained, you are to draw no inferences of any kind.

As I have previously stated, you are the sole and only judges of the credibility of each and every witness, as you are of the facts.

How do you determine and appraise the credibility of witnesses? In your search for the truth, you may, and you should, use plain, ordinary common sense. When you walk into this courtroom or when you enter this jury box, you do not leave your common sense at the door. It is with you throughout.

You have heard the witnesses on the stand and heard the manner in which they testified. How did they impress you? Did the witness appear to be (1625) testifying frankly, candidly and fairly? What degree of credit you should give a witness' testimony may be determined by his conduct and his manner of testifying and his relationship or interest in the outcome of the controversy.

In other words, in applying the test as to the credibility of the witnesses, again you apply your own common sense and your everyday experience and act exactly as you would in your own affairs when called upon to make important decisions.

You may take into account the interest of a witness, but an interested witness is not necessarily unworthy of belief. It is a factor that you may consider in determining the weight and the credibility to be given to his testimony, just as you may take into consideration any factor which appeals to you in aiding you to decide

whether or not anyone is telling the truth. To use the vernacular, you really size up the witness.

If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief, as appeals to your reason or judgment. Remember always it is the quality of the evidence that (1026) counts.

The defendant, Sing Kee, has taken the witness stand to testify in his own behalf. He was under no obligation to do so, but a defendant may testify if he so chooses.

By testifying in this case, Sing Kee became a witness whose credibility is for you to judge, along with the credibility of all the other witnesses.

It is proper to note that the deep personal interest which every defendant has in the result of the action against him should be considered by the jury in weighing his innocence and determining how far and to what extent it is worthy of belief. Certain witnesses took the stand on behalf of the defendant and testified with respect to his character and reputation.

Character evidence is relevant to the question of innocence or because it might persuade the jury that a person whose character is thus attested would not have conducted himself as alleged in the indictment. Character evidence of itself may be sufficient to raise a reasonable doubt of guilt where such doubt, on the basis of the other evidence, would not exist.

(1027) Thus, you must consider character evidence in connection with all the other evidence in the case. If, after weighing all the evidence, you are convinced of the defendant's guilt beyond a reasonable doubt on any or all of the counts in the indictment, your duty will be to return a verdict of guilty on such count or counts, notwithstanding the testimony that the defendant was or is a person of good character.

If, however, on the basis of all the evidence, you are not convinced of the guilt of the defendant beyond a reasonable doubt with respect to any or all of the counts, you will return a verdict of not guilty on such count or counts.

The character evidence alone, if you so evaluate it, may be sufficient to raise a reasonable doubt.

The credibility of a witness is solely for you, the jury, to decide. Subject the testimony to the same scrutiny as you would subject any important conversation or act. The mere fact that a witness was called by the Government or is in the Government employ does not entitle such witness' testimony to more weight or credence than that of any other witness.

(1028) The rule in the Federal Court is that a defendant may be convicted on the uncorroborated testimony of an accomplice or informer. Certain witnesses who testified for the Government were named in the indictment as co-conspirators. By reason of the participation in the alleged criminal scheme, they did not become incompetent as witnesses and their testimony may be considered by you together with all the other evidence in the case.

However, the testimony of an accomplice or an informer should be scrutinized by you with the greatest care and caution. It is not to be rejected, however, unless you come to the conclusion that it is not to be believed. After carefully scrutinizing such testimony, you have a right to believe all of it or any part of it, and you also have a right to disbelieve all of it or any part of it.

During the course of this trial you have heard mentioned such terms as "cross-examination, impeachment and credibility." I should like at this time to comment on these terms.

You have observed during this trial, after a witness had testified on direct examination, for the party who

called him, that he was turned over to (1029) counsel for the adverse party to be cross-examined. The fundamental purpose of cross-examination is to elicit suppressed or undeveloped facts, if any, relating to the matters covered during the direct examination.

However, cross-examination may extend to collateral matters which do not relate either to the facts in issue or to relevant facts when its object is to diminish the personal trustworthiness or credit of the witness. This is known as impeaching the credibility of a witness.

Nevertheless, as I have said, you are the sole judges of the credibility of each and every witness. You may accept so much of the witness' testimony as you believe and reject that which you do not believe, or you may reject the whole of the witness' testimony.

In discussing the testimony, I have attempted, of course, to adhere to the record. If, perchance, any reference I have made to testimony in the case does not coincide with your own recollection of the facts, you will have no hesitancy in disregarding such reference and relying upon your own recollection. No statement by me is intended (1030) in any single respect to influence your judgment.

You came into this jury box at the commencement of this case, without any preconceived views, ideas or opinions concerning the guilt or innocence of the defendant, and what you know about the case you have learned only from the testimony of the witnesses and from the exhibits admitted into evidence. Your final determination of the facts must be based upon that evidence.

Each of you is entitled to his own opinion but you are expected to exchange views with your fellow jurors. That, of course, is the very purpose of jury deliberation—to discuss and consider the evidence and to listen to the arguments and reasons of your fellow jurors, to present

your own individual points of view and reach an agreement, if you can, solely and only on the evidence, if you can do so without violence to your own individual judgment.

You are not to yield, however, for example, simply because you are outnumbered or outweighed. You vote with the others only if you are convinced on the evidence and the law that it is the correct way to decide the case. On the other hand, you should not hesitate, if you are convinced by a fellow (1031) juror, to change your point of view if it appears to be erroneous to you.

You will return a verdict of either guilty or not guilty separately on each of the four counts in the indictment. To return a verdict, it must be unanimous.

You may have the indictment and any documents which are in evidence to take with you into the jury room for consideration during your deliberations.

I have already instructed you, and I repeat, that the indictment is not evidence of any of the allegations contained therein. It is only a charge or a complaint. It does not figure in any way in your deliberations.

You may, if you so desire, request that the court reporter read any portion of the testimony in the case.

With that, the Court submits this case to you with full confidence that you will each live up to your oath of office.

If there are any exceptions not heretofore made, I will take the same in chambers.

Mr. Stim: Your Honor, I have no exceptions, (1032) except that I respectfully ask the court to charge this. You did charge——

The Court: You want this mentioned in open court?

Mr. Stim: This is a very simple thing.

The Court: I would prefer to have it in chambers.

Discussion
Verdict

(The following discussion took place in chambers, out of the hearing of the jury:)

Mr. Stim: Your Honor stated in your main charge that if they find there are a lot of non-related conspiracies which relate to false affidavits, then they must find that the conspiracy charged in the indictment has not been proved. I only ask you to charge one thing, that you must find them then not guilty under the conspiracy.

The Court: I think I have, already.

Mr. Stim: All right.

I want to congratulate you, Judge. That is as fair a charge as I have ever heard.

(The following occurred in open court, in the presence of the jury:)

The Court: I want now to dismiss the two alternate jurors. You may step out of the box. You (1033) are now excused. Thank you very much for your patient attendance.

(Two alternate jurors excused.)

(Marshals sworn.)

(All exhibits submitted to the jury. The jury retires for deliberation at 4:05 p.m.)

(At 5:35 p.m., the jury returned to the jury box.)

(Roll call.)

The Clerk: Mr. Foreman, has the jury reached a verdict?

The Foreman: Yes, we have.

The Clerk: How say you?

The Foreman: We find the defendant guilty on all counts.

The Clerk: Members of the jury, listen to your verdict. You say you find the defendant guilty on all four counts of the indictment, and so say all of you?

(Jury nods assent.)

The Court: You are excused now with the thanks of the Court for listening and for determining this case.

Mr. A. Stim: Your Honor, at this time I would (1034) like the jury polled as to each count.

The Court: As to each count separately?

Mr. A. Stim: Yes.

The Clerk: Members of the jury, you say you find the defendant guilty on Count No. 1, Count No. 2, Count No. 3 and——

The Court: He wants them polled separately on each count.

The Clerk: Members of the jury, you say you find the defendant guilty on Count 1?

(Jury polled.)

The Clerk: You say you find the defendant guilty on Count No. 2 of the indictment?

(Jury polled.)

The Clerk: Members of the jury, you say you find the defendant guilty on the third count of the indictment?

(Jury polled.)

The Clerk: Members of the jury, you say you find the defendant guilty on the fourth count of the indictment?

(Jury polled.)

* * * * *

(1035) Mr. A. Stim: In that event, I would like to make a motion to set aside the verdict on all of the counts of the indictment in that the verdict was against the weight of the evidence, in that the guilt of the defendant was not proven as to Count 1, the conspiracy count, and Counts 2, 3 and 4, beyond a reasonable doubt, as a matter of law.

The Court: Motion is denied.

Mr. A. Stim: I take exception to that, your (1036) Honor, and I make a motion on the same grounds for a new trial.

The Court: Motion is denied.

Mr. A. Stim: At this time, your Honor, I would like to make a motion to continue the bail of the defendant pending sentencing.

The Court: Bail is five thousand?

Mr. Goettel: That is right, your Honor. I have no objection.

The Court: Motion is granted and the defendant will be continued on $5,000 bail until the time of sentence.

The sentence is set down for March 5th at ten a.m., and I believe I will be in Room 128, the calendar portion, civil calendar, Room 128, and I ask to have a pre-sentence report from the Probation Department made available to me.

(Adjourned to March 5, 1957, 10:00 a.m.)

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